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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,667	02/10/2004	J. Kevin Alsobrook	8590-101	5868
36412	7590	06/03/2005	EXAMINER	
DUCKOR SPRADLING METZGER 401 WEST A STREET, SUITE 2400 SAN DIEGO, CA 92101-7915			KUHN, SARAH LOUISE	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 06/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/777,667

Applicant(s)

ALSOBROOK ET AL.

Examiner

Sarah L. Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 25-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordes, U.S. Patent 3,636,999 in view of Losito, U.S. Patent 3,734,004 and <http://www.cfic.ca>.

In regard to claims 1 and 25-27, Cordes discloses a method of processing vegetables, such as garlic and onions (column 2, line 27), having bulbs including root crowns comprising applying force to each one of the vegetables to separate the roots or portions thereof at or near the root crown from the remaining portion of the vegetable (column 1, line 64). Cordes teaches the use of gentle forces to pull out the roots of the vegetables rather than the use of abruptly jarring forces as claimed by applicant. However, it is not clear from applicant's specification as to what makes the opposing forces of applicant's method abruptly jarring or otherwise patentably distinct from the teaching of Cordes. Figure 3 of Cordes suggests that the bulbs are engaged by the rolls at an angle. Even so, altering this angle, so that the vegetable is in a vertical position as claimed by applicant, would not create any unexpected result and would further be an obvious way to optimize the efficiency of the derooter. Additionally, it would have been obvious to apply such force to any portion of the vegetable where roots are present, such as the bottom of an onion. Cordes does not disclose a step of securing a top portion of each of the vegetables. However, Losito teaches supporting the vegetable vertically by

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securing a top portion of the vegetable (figure 7) while it is moved along a horizontal line of travel (figures 1 and 2) and its roots are severed. It would therefore be obvious to support the vegetable by its stalk while it is moved along a horizontal line of travel and its roots are pulled out in order to maintain control over the vegetable without interfering with the area of the vegetable that is to be subjected to root removal. Cordes does not expressly disclose the packaging of the vegetables in a container, but it is well established in the field to package vegetables before sale for consumer convenience as evidenced by the Canadian Food Information Council at <http://www.cfic.ca>. It would therefore be obvious to package the vegetables in order to have greater appeal to consumers in our fast paced society that are interested in time saving foods.

In regard to claim 2, Cordes discloses a method wherein the applying opposing forces includes applying force to the bottom portion of each one of the vegetables below the intersection of the root crown and the bulb in opposition to force applied to the top portion of the vegetable to separate the bottom portion from the vegetable at the root crown (column 1, line 61).

In regard to claims 3 and 5, it would be expected and further obvious in Cordes that the separated portions of the vegetables are discarded since the entire point of the process is to remove the roots of the vegetable before sale and the roots are not eaten or otherwise useful.

In regard to claim 4, Cordes discloses a method wherein applying force to the bottom portion includes moving the bottom portion of the vegetables into engagement with at least one pair of rollers (column 1, line 31 and figure 3).

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In regard to claim 6, Cordes discloses singulating a group of vegetables prior to the applying of force as demonstrated by figure 3.

In regard to claim 7, it is well known in the field to wash vegetables before sale. Therefore, it would have been obvious to wash the vegetables of Cordes in order to remove dirt and debris in order to increase the aesthetic appeal of the vegetables.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordes, Losito, and <http://www.cfic.ca>, as applied to claims 1-7 and 25-27 above, further in view of Raaij, U.S. Patent 3,602,279. Cordes does not disclose peeling the foreskins from the vegetables. Raaij, however, teaches a method for skinning onions or like vegetables (column 1, line 34). Raaij further discloses that a machine for peeling the foreskins from vegetables can be synchronized with an apparatus for removing the root portions of the vegetables (column 1, line 44). It would therefore be obvious to peel the foreskins from the derooted vegetables in order to remove unnecessary material from the vegetable so as to increase the aesthetic appeal of the vegetables.

In regard to claim 9, Cordes does not disclose supporting the vegetable vertically by its stalk. However, Losito teaches supporting the vegetable vertically by its stalk (figure 4) while its roots are severed. It would therefore be obvious to support the vegetable by its stalk while its roots are pulled out in order to prevent injuries or bruising during removal of the roots as clearly taught by Losito.

In regard to claim 10, Cordes further discloses translating the vegetables along a path of travel (column 5, line 23).

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Claims 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordes, Losito, and <http://www.cfic.ca>, as applied to claims 1-7 and 25-27 above, in further view of Kruithoff, U.S. Patent 4,753,296.

In regard to claim 11, Cordes discloses translating the vegetables along a path of travel into engagement with a de-rooter (column 5, line 23) to apply force to the bottom portion of the vegetable (column 1, line 61), but fails to disclose translating the vegetables substantially vertically. However, Kruithoff teaches translating the vegetables substantially vertically along a path of travel into engagement with a de-rooter (figure 4). It would therefore be obvious to translate the vegetables substantially vertically rather than horizontally if circumstances, such as those during harvesting, made it preferable to do so.

In regard to claim 12, Cordes further discloses translating the vegetables to a second de-rooter to repeat the applying force to the bottom portion of the vegetables (column 1, line 31).

In regard to claim 13, Cordes fails to disclose the applying of force being caused by the holding the top portion of the vegetables. However, Losito teaches the holding of the top portion of a vegetable while the roots are removed (figure 7). It would therefore be obvious to hold the upper portion of the vegetable when removing the roots by pulling rather than by severing in order to provide support for the vegetable and increase the opposing force for more efficient pulling of the roots.

In regard to claim 14, it is well known in the field to wash vegetables before sale. Therefore, it would have been obvious to wash the vegetables of Cordes in order to remove dirt and debris in order to increase the aesthetic appeal of the vegetables.

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In regard to claim 15, it is well known in the field to group vegetables before sale in order to provide a unit for sale comprising a number of the vegetables.

In regard to claim 16, Cordes discloses a de-rooter that includes a pair of members rotating in opposite directions (figure 3).

In regard to claims 17 and 18, Cordes discloses a pair of rotating members comprising a pinch roller and a meshing gear (figure 3). It would be an obvious alternative to use either a pair of pinch rollers or a pair of meshing gears to accomplish the same task of removing the crown and/or roots from the vegetable without bruising the vegetable.

In regard to claim 19, Cordes fails to disclose a moveable clamp. Losito teaches that a vegetable can be clamped between foam pieces that are attached to parallel belts when de-rooting (figure 4). Losito also teaches that the clamp is moveable because when the vegetable reaches the end of the belt, the opposing foam pieces separate to release the vegetable (figure 1). Therefore, it would have been obvious to use clamps in Cordes in order to prevent injuries or bruising during removal of the crown and/or roots.

### *Response to Arguments*

Applicant's arguments, see the bottom of page 6, filed April 11<sup>th</sup>, 2005, with respect to the 35 U.S.C. §112 rejections of claims 1-19 and 25-27 have been fully considered and are persuasive. The rejection of claims 1-19 and 25-27 has been withdrawn.

Applicant's other arguments have been fully considered but they are not persuasive.

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Applicant argues that Cordes teaches the use of gentle forces to pull out the roots of the vegetables rather than the use of abruptly jarring forces as claimed by applicant. However, it is not clear from either the claims or the specification as to what makes the downward force of applicant's method abruptly jarring or otherwise patentably distinct from the teaching of Cordes. Cordes teaches that de-rooting of the vegetable can be accomplished without such abrupt forces. As applicant has not provided evidence to show that applying a force other than abrupt would not produce the desired derooting effect on the vegetables, it is the examiner's position that no patentability distinction exists between the claimed invention and the prior art.

In response to applicant's argument that Cordes and Losito cannot be combined, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Losito provides the broad teaching of providing support for a vegetable while removing its roots. As it would have been obvious to use the invention of Cordes in the derooting of any vegetable, it also would have been obvious to support the vegetable, as taught by Losito, in a manner appropriate to the vegetable's specific shape and size, to prevent damage during derooting.



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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700